

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

BRIAN SWAN, M.D.)

Physician's and Surgeon's)
Certificate No. A 88378)

Respondent.)
_____)

Case No. 04-2012-220756


DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on June 12, 2014.

IT IS SO ORDERED May 13, 2014.

MEDICAL BOARD OF CALIFORNIA


By: _____
Dev Gnanadev, M.D., Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 KLINT JAMES MCKAY
Deputy Attorney General
4 State Bar No. 120881
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 576-1327
6 Facsimile: (213) 897-9395
E-mail: Klint.McKay@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **BRIAN SWAN, M.D.**
14 **2618 San Miguel Drive**
Newport Beach, CA 92660
Physician's and Surgeon's Certificate No.
A88378

15 Respondent.

Case No. 04-2012-220756

OAH No. 2013090208

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
20 which will be submitted to the Board for approval and adoption as the final disposition of the
21 Accusation.

22 **PARTIES**

23 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
24 Board of California. She brought this action solely in her official capacity and is represented in
25 this matter by Kamala D. Harris, Attorney General of the State of California, by Klint James
26 McKay, Deputy Attorney General.
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CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 04-2012-220756.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondent BRIAN SWAN, M.D. has never been the subject of any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A88378 issued
3 to Respondent BRIAN SWAN, M.D. (Respondent) is revoked. However, the revocation is stayed
4 and Respondent is placed on probation for five (5) years from the effective date of the adoption of
5 this Stipulation by the Board on the following terms and conditions.

6 1. **CONTROLLED SUBSTANCES- MAINTAIN RECORDS AND ACCESS TO**
7 **RECORDS AND INVENTORIES.** Respondent shall maintain a record of all controlled
8 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any
9 recommendation or approval which enables a patient or patient's primary caregiver to possess or
10 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health
11 and Safety Code section 11362.5, during probation, showing all the following: 1) the name and
12 address of patient; 2) the date; 3) the character and quantity of controlled substances involved;
13 and 4) the indications and diagnosis for which the controlled substances were furnished.

14 Respondent shall keep these records in a separate file or ledger, in chronological order. All
15 records and any inventories of controlled substances shall be available for immediate inspection
16 and copying on the premises by the Board or its designee at all times during business hours and
17 shall be retained for the entire term of probation.

18 2. **CONTROLLED SUBSTANCES - ABSTAIN FROM USE.** Respondent shall abstain
19 completely from the personal use or possession of controlled substances as defined in the
20 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
21 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
22 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
23 illness or condition.

24 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
25 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
26 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
27 telephone number.

1 If Respondent has a confirmed positive biological fluid test for any substance (whether or
2 not legally prescribed) and has not reported the use to the Board or its designee, Respondent
3 shall receive a notification from the Board or its designee to immediately cease the practice of
4 medicine. The Respondent shall not resume the practice of medicine until final decision on an
5 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
6 probation shall be filed by the Board within 15 days of the notification to cease practice. If the
7 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
8 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
9 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
10 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
11 shall not apply to the reduction of the probationary time period.

12 If the Board does not file an accusation or petition to revoke probation within 15 days of the
13 issuance of the notification to cease practice or does not provide Respondent with a hearing
14 within 30 days of a such a request, the notification of cease practice shall be dissolved.

15 3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
16 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
17 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
18 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
19 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
20 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
21 testing. The contract shall require results of the tests to be transmitted by the laboratory or
22 service directly to the Board or its designee within four hours of the results becoming available.
23 Respondent shall maintain this laboratory or service contract during the period of probation.

24 A certified copy of any laboratory test result may be received in evidence in any
25 proceedings between the Board and Respondent.

26 If Respondent fails to cooperate in a random biological fluid testing program within the
27 specified time frame, Respondent shall receive a notification from the Board or its designee to
28 immediately cease the practice of medicine. The Respondent shall not resume the practice of

1 medicine until final decision on an accusation and/or a petition to revoke probation. An
2 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the
3 notification to cease practice. If the Respondent requests a hearing on the accusation and/or
4 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30
5 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be
6 received from the Administrative Law Judge or the Board within 15 days unless good cause can
7 be shown for the delay. The cessation of practice shall not apply to the reduction of the
8 probationary time period.

9 If the Board does not file an accusation or petition to revoke probation within 15 days of the
10 issuance of the notification to cease practice or does not provide Respondent with a hearing
11 within 30 days of a such a request, the notification of cease practice shall be dissolved.

12 4. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
13 date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the
14 Prescribing Practices Course at the Physician Assessment and Clinical Education Program,
15 University of California, San Diego School of Medicine (Program), approved in advance by the
16 Board or its designee. Respondent shall provide the program with any information and documents
17 that the Program may deem pertinent. Respondent shall participate in and successfully complete
18 the classroom component of the course not later than six (6) months after Respondent's initial
19 enrollment. Respondent shall successfully complete any other component of the course within
20 one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense
21 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
22 licensure.

23 A prescribing practices course taken after the acts that gave rise to the charges in the
24 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
25 or its designee, be accepted towards the fulfillment of this condition if the course would have
26 been approved by the Board or its designee had the course been taken after the effective date of
27 this Decision.

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1 Respondent shall submit a certification of successful completion to the Board or its
2 designee not later than 15 calendar days after successfully completing the course, or not later than
3 15 calendar days after the effective date of the Decision, whichever is later.

4 5. PROFESSIONALISM PROGRAM (ETHICS COURSE)

5 Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a
6 professionalism program, that meets the requirements of Title 16, California Code of
7 Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that
8 program. Respondent shall provide any information and documents that the program may
9 deem pertinent. Respondent shall successfully complete the classroom component of the
10 program not later than six (6) months after respondent's initial enrollment, and the longitudinal
11 component of the program not later than the time specified by the program, but no later than
12 one (1) year after attending the classroom component. The professionalism program shall be at
13 respondent's expense and shall be in addition to the Continuing Medical Education (CME)
14 requirements for renewal of licensure.

15 A professionalism program taken after the acts that gave rise to the charges in the
16 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
17 or its designee, be accepted towards the fulfillment of this condition if the program would have
18 been approved by the Board or its designee had the program been taken after the effective date of
19 this Decision.

20 Respondent shall submit a certification of successful completion to the Board or its
21 designee not later than 15 calendar days after successfully completing the program or not later
22 than 15 calendar days after the effective date of the Decision, whichever is later.

23 6. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
24 Respondent shall submit to the Board or its designee for prior approval the name and
25 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
26 has a doctoral degree in psychology and at least five years of postgraduate experience in the
27 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
28 undergo and continue psychotherapy treatment, including any modifications to the frequency of

1 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

2 The psychotherapist shall consider any information provided by the Board or its designee
3 and any other information the psychotherapist deems relevant and shall furnish a written
4 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
5 psychotherapist any information and documents that the psychotherapist may deem pertinent.

6 Respondent shall have the treating psychotherapist submit quarterly status reports to the
7 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
8 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
9 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
10 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
11 period of probation shall be extended until the Board determines that Respondent is mentally fit
12 to resume the practice of medicine without restrictions.

13 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

14 7. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
15 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
16 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
17 licenses are valid and in good standing, and who are preferably American Board of Medical
18 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
19 relationship with Respondent, or other relationship that could reasonably be expected to
20 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
21 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
22 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

23 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
24 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
25 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
26 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
27 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
28 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the

1 signed statement for approval by the Board or its designee.

2 Within 60 calendar days of the effective date of this Decision, and continuing throughout
3 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
4 make all records available for immediate inspection and copying on the premises by the monitor
5 at all times during business hours and shall retain the records for the entire term of probation.

6 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
7 date of this Decision, Respondent shall receive a notification from the Board or its designee to
8 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
9 shall cease the practice of medicine until a monitor is approved to provide monitoring
10 responsibility.

11 The monitor(s) shall submit a quarterly written report to the Board or its designee which
12 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
13 are within the standards of practice of medicine and whether Respondent is practicing medicine
14 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
15 that the monitor submits the quarterly written reports to the Board or its designee within 10
16 calendar days after the end of the preceding quarter.

17 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
18 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
19 name and qualifications of a replacement monitor who will be assuming that responsibility within
20 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
21 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
22 notification from the Board or its designee to cease the practice of medicine within three (3)
23 calendar days after being so notified Respondent shall cease the practice of medicine until a
24 replacement monitor is approved and assumes monitoring responsibility.

25 In lieu of a monitor, Respondent may participate in a professional enhancement program
26 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
27 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
28 chart review, semi-annual practice assessment, and semi-annual review of professional growth

1 and education. Respondent shall participate in the professional enhancement program at
2 Respondent's expense during the term of probation.

3 8. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
4 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
5 where: 1) Respondent merely shares office space with another physician but is not affiliated for
6 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
7 location. If Respondent fails to establish a practice with another physician or secure employment
8 in an appropriate practice setting within 60 calendar days of the effective date of this Decision,
9 Respondent shall receive a notification from the Board or its designee to cease the practice of
10 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
11 practice until an appropriate practice setting is established.

12 If, during the course of the probation, the Respondent's practice setting changes and the
13 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
14 shall notify the Board or its designee within 5 calendar days of the practice setting change. If
15 Respondent fails to establish a practice with another physician or secure employment in an
16 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
17 shall receive a notification from the Board or its designee to cease the practice of medicine within
18 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
19 appropriate practice setting is established.

20 9. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
21 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
22 Chief Executive Officer at every hospital where privileges or membership are extended to
23 Respondent, at any other facility where Respondent engages in the practice of medicine,
24 including all physician and locum tenens registries or other similar agencies, and to the Chief
25 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
26 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
27 calendar days.
28

1 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

2 10. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
3 prohibited from supervising physician assistants.

4 11. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
5 governing the practice of medicine in California and remain in full compliance with any court
6 ordered criminal probation, payments, and other orders.

7 12. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
8 under penalty of perjury on forms provided by the Board, stating whether there has been
9 compliance with all the conditions of probation.

10 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
11 of the preceding quarter.

12 13. GENERAL PROBATION REQUIREMENTS.

13 Compliance with Probation Unit

14 Respondent shall comply with the Board's probation unit and all terms and conditions of
15 this Decision.

16 Address Changes

17 Respondent shall, at all times, keep the Board informed of Respondent's business and
18 residence addresses, email address (if available), and telephone number. Changes of such
19 addresses shall be immediately communicated in writing to the Board or its designee. Under no
20 circumstances shall a post office box serve as an address of record, except as allowed by Business
21 and Professions Code section 2021(b).

22 Place of Practice

23 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
24 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
25 facility.

26 License Renewal

27 Respondent shall maintain a current and renewed California physician's and surgeon's
28 license.

1 Travel or Residence Outside California

2 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
3 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
4 (30) calendar days.

5 In the event Respondent should leave the State of California to reside or to practice
6 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
7 departure and return.

8 14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
9 available in person upon request for interviews either at Respondent's place of business or at the
10 probation unit office, with or without prior notice throughout the term of probation.

11 15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
12 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
13 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
14 defined as any period of time Respondent is not practicing medicine in California as defined in
15 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
16 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
17 time spent in an intensive training program which has been approved by the Board or its designee
18 shall not be considered non-practice. Practicing medicine in another state of the United States or
19 Federal jurisdiction while on probation with the medical licensing authority of that state or
20 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
21 not be considered as a period of non-practice.

22 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
23 months, Respondent shall successfully complete a clinical training program that meets the criteria
24 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
25 Disciplinary Guidelines" prior to resuming the practice of medicine.

26 Respondent's period of non-practice while on probation shall not exceed two (2) years.

27 Periods of non-practice will not apply to the reduction of the probationary term.

28 Periods of non-practice will relieve Respondent of the responsibility to comply with the

1 probationary terms and conditions with the exception of this condition and the following terms
2 and conditions of probation: Obey All Laws; and General Probation Requirements.

3 16. COMPLETION OF PROBATION. Respondent shall comply with all financial
4 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
5 completion of probation. Upon successful completion of probation, Respondent's certificate shall
6 be fully restored.

7 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
8 of probation is a violation of probation. If Respondent violates probation in any respect, the
9 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
10 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
11 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
12 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
13 the matter is final.


14 18. LICENSE SURRENDER. Following the effective date of this Decision, if
15 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
16 the terms and conditions of probation, Respondent may request to surrender his or her license.
17 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
18 determining whether or not to grant the request, or to take any other action deemed appropriate
19 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
20 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
21 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
22 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
23 application shall be treated as a petition for reinstatement of a revoked certificate.

24 19. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
25 with probation monitoring each and every year of probation, as designated by the Board, which
26 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
27 California and delivered to the Board or its designee no later than January 31 of each calendar
28 year.

1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Joseph A. Weimortz. I understand the stipulation and the effect it
4 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: 2/17/2014


9 BRIAN SWAN, M.D.
Respondent

10 I have read and fully discussed with Respondent BRIAN SWAN, M.D. the terms and
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
12 I approve its form and content.

13
14 DATED: 2/17/2014


15 Joseph A. Weimortz
16 Attorney for Respondent

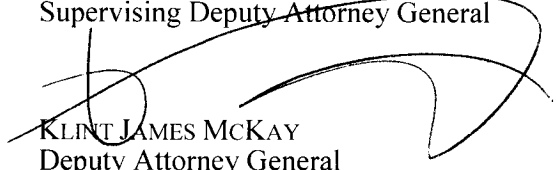
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Medical Board of California.

20 Dated: 18 February, 2014

Respectfully submitted,

21 KAMALA D. HARRIS
22 Attorney General of California
23 ROBERT MCKIM BELL
Supervising Deputy Attorney General

24 
25 KLINT JAMES MCKAY
26 Deputy Attorney General
Attorneys for Complainant

27 LA2013608948
28 Stipulation and Order.docx

Exhibit A

Accusation No. 04-2012-220756

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 KLINT JAMES MCKAY
Deputy Attorney General
4 State Bar No. 120881
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 576-1327
Facsimile: (213) 897-9395
7 E-mail: Klint.McKay@doj.ca.gov
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 9, 2013
BY: J. Halchuk ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 04-2012-220756

14 BRIAN SWAN, M.D.

15 3183-F Airway Avenue, Suite 104
16 Costa Mesa, California 92626

ACCUSATION

17 Physician's and Surgeon's Certificate A88378,
18 Respondent.

20 Complainant alleges:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Interim Executive Officer of the Medical Board of California (Board).

24 2. On or about July 28, 2004, the Board issued Physician's and Surgeon's Certificate
25 number A88378 to Brian Swan, M.D. (Respondent). That license was in full force and effect at
26 all times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the California Business and Professions Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

1 "(f) Any action or conduct which would have warranted the denial of a certificate.

2 "(g) The practice of medicine from this state into another state or country without meeting
3 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
4 apply to this subdivision. This subdivision shall become operative upon the implementation of
5 the proposed registration program described in Section 2052.5.

6 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
7 participate in an interview scheduled by the mutual agreement of the certificate holder and the
8 board. This subdivision shall only apply to a certificate holder who is the subject of an
9 investigation by the board."

10 6. Section 2236 of the Code states:

11 "(a) The conviction of any offense substantially related to the qualifications, functions, or
12 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
13 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
14 evidence only of the fact that the conviction occurred.

15 "(b) The district attorney, city attorney, or other prosecuting agency shall notify the
16 Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or
17 misdemeanor immediately upon obtaining information that the defendant is a licensee. The
18 notice shall identify the licensee and describe the crimes charged and the facts alleged. The
19 prosecuting agency shall also notify the clerk of the court in which the action is pending that the
20 defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds
21 a license as a physician and surgeon.

22 "(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
23 after the conviction, transmit a certified copy of the record of conviction to the board. The
24 division may inquire into the circumstances surrounding the commission of a crime in order to fix

25 _____
26 ¹ California Business and Professions Code section 2002, as amended and effective
27 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in
28 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et seq.) means the "Medical
Board of California," and references to the "Division of Medical Quality" and "Division of
Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 the degree of discipline or to determine if the conviction is of an offense substantially related to
2 the qualifications, functions, or duties of a physician and surgeon.

3 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
4 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
5 shall be conclusive evidence of the fact that the conviction occurred.”

6 7. Section 2237 of the Code states:

7 “(a) The conviction of a charge of violating any federal statutes or regulations or any
8 statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes
9 unprofessional conduct. The record of the conviction is conclusive evidence of such
10 unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo
11 contendere is deemed to be a conviction within the meaning of this section.

12 “(b) Discipline may be ordered in accordance with Section 2227 or the Division of
13 Licensing may order the denial of the license when the time for appeal has elapsed, or the
14 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
15 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
16 Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and
17 to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
18 complaint, information, or indictment.”

19 8. Section 2238 of the Code states:

20 “A violation of any federal statute or federal regulation or any of the statutes or regulations
21 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
22 conduct.”

23 9. Section 2239 of the Code states:

24 “(a) The use or prescribing for or administering to himself or herself, of any controlled
25 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
26 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
27 any other person or to the public, or to the extent that such use impairs the ability of the licensee
28 to practice medicine safely or more than one misdemeanor or any felony involving the use.

1 consumption, or self-administration of any of the substances referred to in this section, or any
2 combination thereof, constitutes unprofessional conduct. The record of the conviction is
3 conclusive evidence of such unprofessional conduct.

4 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
5 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
6 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
7 may order the denial of the license when the time for appeal has elapsed or the judgment of
8 conviction has been affirmed on appeal or when an order granting probation is made suspending
9 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
10 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
11 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
12 information, or indictment.”

13
14 FIRST CAUSE FOR DISCIPLINE
(Illegal Use of Prescription Drugs)

15 10. Respondent is subject to disciplinary action under section 2239 of the Code in that he
16 fraudulently obtained Adderall and other drugs by issuing prescriptions in the name of a former
17 girlfriend and then filling and consuming the drugs himself. The circumstances are as follows:

18 A. On multiple occasions, and specifically on or about July 14, August 22, August 28,
19 September 27, and October 13, 2011, Respondent wrote prescription to J.A.², a former girlfriend,
20 for one or more of Amphetamine Salt Combo, Adderall, Ambien, Clonazepam, Vyvanse,
21 Dextroamphetamine, and Methylin. Respondent then attempted to fill these prescriptions at
22 various pharmacies with the intent of consuming the drugs himself. When he successfully filled
23 the prescriptions, he did in fact consume the drugs himself.

24 B. To facilitate this scheme, he surreptitiously copied J.A.’s driver license to show to
25 pharmacies where he attempted to fill the prescriptions.

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28 ² J.A.’s name is abbreviated for privacy reasons.

1 C. In approximately the same period, he wrote prescriptions on multiple occasions to
2 another girlfriend and then asked her to fill them, with the intent to use the drugs himself. When
3 this scheme succeeded, he did indeed consume the drugs himself.

4 11. Said actions constitute the prescribing, administering, and use by Respondent of
5 drugs to himself in such a manner as to be dangerous or injurious to the licensee

6
7 SECOND CAUSE FOR DISCIPLINE
(Drug Related Conviction)

8 12. Respondent is subject to disciplinary action under section 2237 of the Code because
9 he was convicted of a charge of violating a statute or regulation of this state, regulating dangerous
10 drugs or controlled substances. The facts are that on or about on June 6, 2013, in proceedings
11 entitled *People of the State of California v. Brian Michael Swan*, then pending in Orange County
12 Superior Court in Criminal Case No. 12HF0179 F A. Respondent pled guilty to and was
13 convicted of Counts 2, 3, 8, 9, 19, and 22 of the Felony Complaint, Amendment 1, attached
14 hereto and incorporated by this reference. These counts relate to Respondent's conduct as set
15 forth in the First Cause for Discipline and related offenses.

16 PRAYER

17 **WHEREFORE.** Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Medical Board of California issue a decision:

- 19 1. Revoking or suspending Physician's and Surgeon's Certificate Number A88378,
20 issued to Brian Swan, M.D.
- 21 2. Revoking, suspending, or denying approval of his authority to supervise physician
22 assistants, pursuant to section 3527 of the Code; and
- 23 3. If placed on probation, ordering him to pay the Medical Board of California the costs
24 of probation monitoring .

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4. Taking such other and further action as deemed necessary and proper.

August 9, 2013

DATED: _____

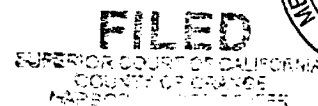


KIMBERLY KIRCHMEYER
Interim Executive Officer
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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Attachment: Felony Complaint, Amendment 1



RECEIVED, Clerk of the Court

100-443887-100

THE PEOPLE OF THE STATE OF CALIFORNIA,) FELONY COMPLAINT
) AMENDMENT 1
 Plaintiff,)
)
)
 vs.) No. 12HF0179
) IPD 11-14757
Michael)
BRIAN MICHAEL SWAN 05/13/69)
 D5113614)
 Defendant(s))

COUNT 1: On or about October 13, 2011, in violation of Sections 459-460(b) of the Penal Code (SECOND DEGREE COMMERCIAL BURGLARY), a FELONY, BRIAN MICHAEL SWAN did unlawfully enter TARGET #T-2163, a commercial building, with the intent to commit larceny.

COUNT 2: On or about October 13, 2011, in violation of Section 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully obtain and attempt to obtain a controlled substance, AMPHETAMINE, and did procure and attempt to procure the administration of and prescription for said controlled substance by fraud, deceit, misrepresentation, subterfuge, and concealment of a material fact.

11/11/11

1 COUNT 3: On or about October 13, 2011, in violation of Section
2 530.5(a) of the Penal Code (IDENTITY THEFT), a FELONY, BRIAN
3 MICHAEL SWAN did willfully and unlawfully obtain personal
4 identifying information, as defined in Penal Code section 530.55
5 (b), of J. ANDERSON, and did unlawfully use and attempt to use
6 that information for an unlawful purpose, specifically OBTAIN
7 PRESCRIPTION MEDICATION, without the consent of J. ANDERSON.

8 COUNT 4: On or about September 27, 2011, in violation of
9 Sections 459-460(b) of the Penal Code (SECOND DEGREE COMMERCIAL
10 BURGLARY), a FELONY, BRIAN MICHAEL SWAN did unlawfully enter
11 SAV-ON #6507, a commercial building, with the intent to commit
12 larceny.

13 COUNT 5: On or about September 27, 2011, in violation of Section
14 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
15 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
16 obtain and attempt to obtain a controlled substance,
17 AMPHETAMINE, and did procure and attempt to procure the
18 administration of and prescription for said controlled substance
19 by fraud, deceit, misrepresentation, subterfuge, and concealment
20 of a material fact.

21 COUNT 6: On or about September 27, 2011, in violation of Section
22 530.5(a) of the Penal Code (IDENTITY THEFT), a FELONY, BRIAN
23 MICHAEL SWAN did willfully and unlawfully obtain personal
24 identifying information, as defined in Penal Code section 530.55
25 (b), of J. ANDERSON, and did unlawfully use and attempt to use
26 that information for an unlawful purpose, specifically OBTAIN
27 PRESCRIPTION MEDICINE, without the consent of J. ANDERSON.

28 COUNT 7: On or about August 28, 2011, in violation of Sections
459-460(b) of the Penal Code (SECOND DEGREE COMMERCIAL
BURGLARY), a FELONY, BRIAN MICHAEL SWAN did unlawfully enter
SAV-ON #6507, a commercial building, with the intent to commit
larceny.

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1 COUNT 8: On or about August 28, 2011, in violation of Section
2 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
3 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
4 obtain and attempt to obtain a controlled substance,
5 AMPHETAMINE, and did procure and attempt to procure the
6 administration of and prescription for said controlled substance
by fraud, deceit, misrepresentation, subterfuge, and concealment
of a material fact.

7 COUNT 9: On or about August 28, 2011, in violation of Section
8 530.5(a) of the Penal Code (IDENTITY THEFT), a FELONY, BRIAN
9 MICHAEL SWAN did willfully and unlawfully obtain personal
10 identifying information, as defined in Penal Code section 530.55
11 (b), of J. ANDERSON, and did unlawfully use and attempt to use
that information for an unlawful purpose, specifically OBTAIN
PRESCRIPTION MEDICATION, without the consent of J. ANDERSON.

12 COUNT 10: On or about August 22, 2011, in violation of Sections
13 459-460(b) of the Penal Code (SECOND DEGREE COMMERCIAL
14 BURGLARY), a FELONY, BRIAN MICHAEL SWAN did unlawfully enter
15 TARGET #T-2163, a commercial building, with the intent to commit
larceny.

16 COUNT 11: On or about August 22, 2011, in violation of Section
17 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
18 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
19 obtain and attempt to obtain a controlled substance,
20 AMPHETAMINE, and did procure and attempt to procure the
21 administration of and prescription for said controlled substance
by fraud, deceit, misrepresentation, subterfuge, and concealment
of a material fact.

22 COUNT 12: On or about August 22, 2011, in violation of Section
23 530.5(a) of the Penal Code (IDENTITY THEFT), a FELONY, BRIAN
24 MICHAEL SWAN did willfully and unlawfully obtain personal
25 identifying information, as defined in Penal Code section 530.55
26 (b), of J. ANDERSON, and did unlawfully use and attempt to use
that information for an unlawful purpose, specifically OBTAIN
PRESCRIPTION MEDICATION, without the consent of J. ANDERSON.

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1 COUNT 13: On or about July 14, 2011, in violation of Sections
2 459-460(b) of the Penal Code (SECOND DEGREE COMMERCIAL
3 BURGLARY), a FELONY, BRIAN MICHAEL SWAN did unlawfully enter
4 TARGET #T-2163, a commercial building, with the intent to commit
larceny.

5 COUNT 14: On or about July 14, 2011, in violation of Section
6 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
7 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
8 obtain and attempt to obtain a controlled substance,
9 AMPHETAMINE, and did procure and attempt to procure the
10 administration of and prescription for said controlled substance
by fraud, deceit, misrepresentation, subterfuge, and concealment
of a material fact.

11 COUNT 15: On or about July 14, 2011, in violation of Section
12 530.5(a) of the Penal Code (IDENTITY THEFT), a FELONY, BRIAN
13 MICHAEL SWAN did willfully and unlawfully obtain personal
14 identifying information, as defined in Penal Code section 530.55
15 (b), of J. ANDERSON, and did unlawfully use and attempt to use
that information for an unlawful purpose, specifically OBTAIN
PRESCRIPTION MEDICATION, without the consent of J. ANDERSON.

16 COUNT 16: On or about October 13, 2011, in violation of Section
17 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
18 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
19 obtain and attempt to obtain a controlled substance, VYVANSE,
20 and did procure and attempt to procure the administration of and
21 prescription for said controlled substance by fraud, deceit,
misrepresentation, subterfuge, and concealment of a material
fact.

22 COUNT 17: On or about October 20, 2011, in violation of Section
23 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
24 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
25 obtain and attempt to obtain a controlled substance, VYVANSE,
26 and did procure and attempt to procure the administration of and
27 prescription for said controlled substance by fraud, deceit,
misrepresentation, subterfuge, and concealment of a material
fact.

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1 COUNT 18: On or about November 20, 2011, in violation of Section
2 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
3 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
4 obtain and attempt to obtain a controlled substance, AMPHETAMINE
5 SALT COMBO, and did procure and attempt to procure the
6 administration of and prescription for said controlled substance
by fraud, deceit, misrepresentation, subterfuge, and concealment
of a material fact.

7 COUNT 19: On or about November 27, 2011, in violation of Section
8 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
9 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
10 obtain and attempt to obtain a controlled substance, VYVANSE,
11 and did procure and attempt to procure the administration of and
12 prescription for said controlled substance by fraud, deceit,
13 misrepresentation, subterfuge, and concealment of a material
14 fact.

15 COUNT 20: On or about December 12, 2011, in violation of Section
16 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
17 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
18 obtain and attempt to obtain a controlled substance, AMPHETAMINE
19 SALT COMBO, and did procure and attempt to procure the
20 administration of and prescription for said controlled substance
21 by fraud, deceit, misrepresentation, subterfuge, and concealment
22 of a material fact.

23 COUNT 21: On or about December 22, 2011, in violation of Section
24 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
25 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
26 obtain and attempt to obtain a controlled substance, VYVANSE,
27 and did procure and attempt to procure the administration of and
28 prescription for said controlled substance by fraud, deceit,
misrepresentation, subterfuge, and concealment of a material
fact.

COUNT 22: On or about December 27, 2011, in violation of Section
11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
obtain and attempt to obtain a controlled substance, ADDERALL,
and did procure and attempt to procure the administration of and
prescription for said controlled substance by fraud, deceit,
misrepresentation, subterfuge, and concealment of a material
fact.

1 COUNT 23: On or about January 17, 2012, in violation of Section
2 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
3 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
4 obtain and attempt to obtain a controlled substance, AMPHETAMINE
5 SALT COMBO, and did procure and attempt to procure the
6 administration of and prescription for said controlled substance
7 by fraud, deceit, misrepresentation, subterfuge, and concealment
8 of a material fact.

9 COUNT 24: On or about January 17, 2012, in violation of Section
10 11173(a) of the Health and Safety Code (OBTAINING CONTROLLED
11 SUBSTANCE BY FRAUD), a FELONY, BRIAN MICHAEL SWAN did unlawfully
12 obtain and attempt to obtain a controlled substance, VYVANSE,
13 and did procure and attempt to procure the administration of and
14 prescription for said controlled substance by fraud, deceit,
15 misrepresentation, subterfuge, and concealment of a material
16 fact.

17 I declare under penalty of perjury, on information and belief,
18 that the foregoing is true and correct.

19 Dated 02-22-2012 at Orange County, California.
20 DH/MP 12F00815

21 TONY RACKAUCKAS, DISTRICT ATTORNEY

22 by: 
23 Deputy District Attorney

24 RESTITUTION CLAIMED

25 [] None
26 [] \$ _____
27 [X] To be determined

28 PROP36/PC1000 ELIGIBILITY:

BRIAN MICHAEL SWAN - Prop36 INELIGIBLE/PC1000 INELIGIBLE

BAIL RECOMMENDATION:

BRIAN MICHAEL SWAN - \$ 50,000.00

NOTICES:

The People request that defendant and counsel disclose, within 15 days, all of the materials and information described in Penal Code section 1054.3, and continue to provide any later-acquired materials and information subject to disclosure, and without further request or order.

Pursuant to Penal Code Section 296.1, defendant, BRIAN MICHAEL SWAN, is required to provide DNA samples and thumb and palm prints.